

SO ORDERED.**SIGNED this 3rd day of September, 2020.**

A handwritten signature in cursive script, reading "Lena Mansori James".

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)	
)	
Larry Gene Demery,)	Case No. 19-80948
Debtor.)	Chapter 13
_____)	

ORDER SUSTAINING OBJECTION TO CONFIRMATION

This matter came before the Court for hearing on August 11, 2020 on the Objection by U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trustee 2019-GS4 (“U.S. Bank”) to confirmation of chapter 13 plan (Docket No. 24, the “Objection”). For the reasons stated below, the Court will sustain the Objection and allow 30 days for Mr. Demery to file an amended chapter 13 plan.

Background

Mr. Demery filed a petition for relief under chapter 13 of the Bankruptcy Code on December 19, 2019. On his schedule A/B, Mr. Demery listed a sole interest in land located at 215 Johnny George Road in Columbus County, North Carolina (2.89 acres) (the “Land”) with a value of \$24,800.00 and a double wide Oakwood mobile home (the “Home”) with a value of \$5,000.00 (collectively, the “Property”). U.S. Bank filed a proof of claim on February 19, 2020 asserting a claim in the

amount of \$69,043.75 secured by a deed of trust on the Property.¹ Select Portfolio Servicing, Inc. was listed as servicer.

Mr. Demery's chapter 13 plan, filed immediately following the bankruptcy petition on December 19, 2019 (Docket No. 2, the "Plan"), proposes to value the Land under 11 U.S.C. § 506 and treat the claim as secured in an amount equal to the value of the Land, which it sets at \$24,800.00. The Plan was noticed out to all parties on February 25, 2020, and on March 20, 2020, U.S. Bank filed the Objection asserting the value exceeded \$24,800.00 and it did not consent to the modification of the terms of its note and deed of trust.

A hearing on the Objection was originally scheduled April 9, 2020 but then was continued several times while U.S. Bank obtained an appraisal and the parties attempted to resolve the matter. On June 24, 2020, U.S. Bank amended its claim, again showing Select Portfolio Servicing as servicer, to include a copy of an assignment dated June 5, 2020 reflecting the transfer from Goldman Sachs Mortgage Company by Select Portfolio Servicing, Inc. to U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2019-GS4. At a telephonic hearing on July 2, 2020, the parties appeared and requested an evidentiary hearing be scheduled to determine the value of the Property.²

At the evidentiary hearing, U.S. Bank presented the testimony of Bobby D. Hensley, a certified real estate appraiser who qualified as an expert, and tendered Mr. Hensley's appraisal of the Property into evidence (Creditor's Exhibit 1). Mr.

¹ Though Mr. Demery listed the Home as separate from the Land on both his schedule A/B and claim for exemptions, at the hearing, he did not dispute that the Home is part of the real property and therefore encumbered by the deed of trust.

² Mr. Demery late-filed a response to the Objection raising the issue of standing on the basis that the assignment attached to the amended proof of claim is dated after the objection was filed, and counsel addressed the issue at the outset of the hearing. U.S. Bank countered that at relevant times it has been the real party in interest with the right to enforce the note under North Carolina law, and therefore the right to object to confirmation. *See In re Sears*, No. 12-32315, 2013 WL 2147803, at *7 (Bankr. W.D.N.C. May 16, 2013). Further, the Court notes that as of the date of the hearing, U.S. Bank was a party in interest with a filed claim as to which no objection is pending, and the Court is making no finding as to the validity of U.S. Bank's claim at this time.

Demery also testified on the condition of the Property as well as his opinion of the value. The Debtor tendered two exhibits into evidence: a document showing the NADA value of the Home (Debtor's Exhibit 1) and the tax card for the Property (Debtor's Exhibit 2). The issue of valuation of the Property was taken under advisement but objections regarding feasibility of the proposed plan or the filed secured claim of Quantum3 Group, LLC are not addressed herein.

Discussion

Through a chapter 13 plan, a chapter 13 debtor may modify the rights of holders of secured claims unless that claim is secured only by real property that is the debtor's principal residence. 11 U.S.C. § 1322(b)(2). Because the Property at issue here is not the Debtor's principal residence, U.S. Bank's claim may be modified if, in relevant part, "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii).

Under 11 U.S.C. § 506(a)(1) "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property..." Section 506(a) further instructs "[s]uch value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

Section 506(a)(1) "provides that a claim is secured only to the extent of the value of the property on which the lien is fixed," and "the remainder of that claim is considered unsecured." *Hurlburt v. Black*, 925 F.3d 154, 159 (4th Cir. 2019) (citing *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 239 (1989)). Once a claim is bifurcated under § 506(a)(1) into secured and unsecured amounts, § 1325(a)(5)(B) is used to "cram down the bifurcated claim to its secured amount, effectively 'stripping the lien from the portion of the claim that exceeds that value.'" *Id.* (citing *In re Young*, 199 B.R. 643, 648 (Bankr. E.D. Tenn. 1996)).

Thus, for purposes of plan confirmation, the Court must determine the fair market value of the Property, “the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s-length transaction.” *In re Strever*, 468 B.R. 776, 781 n.9 (Bankr. D.S.C. 2012) (citing the Black’s Law Dictionary (Westlaw 9th ed. 2009) definition of fair market value and declining to use foreclosure sale values in determining value of the debtor’s residence under § 506(a)).

Relying on Mr. Hensley’s appraisal, U.S. Bank asserts that the appropriate value of the Property for purposes of the Debtor’s Plan is \$45,000.00. Mr. Hensley’s appraisal is based on his inspection of the Property, both inside and out, and the sales comparison approach. At the hearing, Mr. Hensley described the Property as being in average condition, by which he meant that it was livable, with all utilities working and no safety concerns. The Property consists of 2.89 acres of land with a private well and septic system for a double-wide, three bedroom, two bath manufactured home that has been tenant occupied since January of this year. In his written appraisal, he noted several maintenance and repair issues, including (1) the damaged/missing vinyl skirting needs to be reattached at cost of \$1000.00, (2) vinyl flooring in kitchen and bathrooms is torn in areas and needs to be replaced at \$1000.00, and (3) ceiling in master bathroom needs repair from roof leak at cost of \$500.00. The appraisal indicates that the tenant had advised that the leak had been fixed. Mr. Hensley used four comparable sales of double-wide manufactured homes to assist in him in determining value.

Photographs of the interior and exterior of the Property from the appraisal report confirm a few pieces of missing skirting on the side and rear of Home, the tears in the flooring, and damage to the bathroom ceiling. The interior photographs confirm the livability of the Home and a modest but maintained appearance for the exterior of the Home and Land. The photographs support Mr. Hensley’s testimony that he didn’t see any issues related to the “safety or soundness” of the Property.

Through his testimony, Mr. Hensley demonstrated a sound familiarity and understanding of the real estate market in Columbus County and neighboring

counties, appraisal methodology and its application, and expertise with regard to manufactured homes. During cross examination, Mr. Hensley confirmed that his \$45,000.00 value accounts for the current condition of the Property and necessary repairs as described in his report. He indicated that his appraisal did not reflect the cost of repairs to the roof, as the tenant had informed him the roof had been repaired and no longer leaked. When questioned by counsel for the Trustee regarding his opinion of the current tax value of the Property of \$31,200.00, Mr. Hensley indicated that, in his opinion, the tax value was lower than the fair market value, and in his experience a low tax value was not uncommon.

In contrast, Mr. Demery asserts that the value of the Property is no more than \$24,800.00. At the hearing, Mr. Demery described that he purchased the Home in 1996 for approximately \$52,000.00 to use as a vacation home and, eventually, for his retirement. He had inherited the Land. During his direct testimony, Mr. Demery described that this \$24,800.00 value was based the tax value for the Land of \$6,417.00³ and the “insurance value.” In addition, counsel directed Mr. Demery to the NADA value for the Home of \$19,671.29 as reflected on Debtor’s Exhibit 1, and they agreed that tax value for the Land and the NADA value totaled \$26,088.00.

During his testimony, Mr. Demery described the Home as in need of extensive repairs. Specifically, he testified that the siding is weather beaten and needs to be “ripped off” so that new insulation can be installed. He estimated this process would cost approximately \$25,000.00 or more. He indicated that the roof had been replaced five years ago at a cost of \$4,500.00, but that there were now three leaks, such that the roof had to be completely removed and replaced again and would cost more. He further estimated that the subfloor had to be replaced at a cost of \$7,000.00 to \$8,000.00, and that the vinyl skirting had to be replaced with labor costs estimated at \$800.00 to \$900.00. Mr. Demery did not indicate that he had personal expertise in home construction or repairs, and he had not obtained estimates for the work needed other than for the work necessary to repair the vinyl

³ Mr. Hensley testified that his opinion of the “site value” of the 2.89 acres to be \$12,500.00, \$10,000 for a one acre lot and \$2,500.00 for the additional acreage.

skirting. He did not introduce any written estimates for repairs into evidence. In response to the question of whether he had a plan for repairs over the next five years, Mr. Demery said that he had a plan for electrical and then roof repairs, but had no quote on electrical repairs. He estimated at the hearing that a monthly repair budget for the Property would be \$800.00 for three to four years. Mr. Demery currently rents the Property to a family at a below market rate of \$400.00 per month with an agreement that the tenants are to take care of some of the repairs, hoping to increase the rent to \$500.00 in January.

When describing the necessary repairs, Mr. Demery's estimates of costs appeared to be speculative, and in fact Mr. Demery himself described them as rough estimates. For instance, his statement that the siding needed to be entirely removed and new insulation installed, at a cost of more than \$25,000.00, seemed pure conjecture. The only repair that Mr. Demery indicated he had an actual estimate for, the vinyl skirting at \$800.00-\$900.00, is in line with Mr. Hensley's estimate of \$1,000.00. As to the leaking roof, the Court considers that Mr. Demery does not live in the Property and the tenant told Mr. Hensley that the roof was fixed, and by Mr. Demery's own testimony, the tenant pays below-market rent in exchange for completing some of the necessary repairs.

After describing the extensive repairs, Mr. Demery testified he thought the value of the Property is "\$15,000.00 or less." Mr. Demery had no facts to support his estimates of comparable property values, just hearsay and guesswork—"I know people that have bought properties less than that." And on cross-examination, in response to counsel's question of any properties in particular, "No I don't have particular addresses or anything...."

It must be noted that Mr. Demery's schedules and statements, filed under penalty of perjury, indicate the Land, by itself, has a value of \$24,800.00, and that the Home has a value of \$5,000.00. Mr. Demery included the Home with a value of \$5,000.00 in a list of property, totaling \$9,533.51, that he claimed as exempt under N.C. Gen Stat 1C-1601(a)(2). The maximum amount allowed under N.C. Gen Stat 1C-1601(a)(2) is \$5,000.00. Mr. Demery's Plan includes a liquidation value

requirement of \$4,533.00, though it appears unnecessary, given that the Home has no value above U.S. Bank's lien. Based upon the schedules and statements filed with his petition, Mr. Demery scheduled the total value of the Property as \$29,800.00, which conflicts with his current assertion that the Property has a value of \$24,800.00.⁴

Bankruptcy courts determine valuation questions by reviewing the facts presented. Valuation "is not an exact science,"⁵ and the court must use its judgment in forming a determination as to the value of the Property. Here, U.S. Bank admitted into evidence extensive testimony and a written appraisal by a state certified real estate appraiser who is well-familiar with the county in which the Property is located and utilized a widely accepted appraisal methodology to arrive at a value of \$45,000.00. In contrast, Mr. Demery testified as to extensive repairs he believes are needed for the Property but provided only speculative assertions as to the cost of these repairs and the Property's value. The record in this case reflects that Mr. Demery's valuation of the Property has ranged from "\$15,000.00 or less" (testimony) to \$24,800.00 (testimony) to \$26,088.29 (testimony) to \$29,800.00 (Land and Home on Schedule A/B). Even more confusing, Mr. Demery's valuation of the Land by itself ranges from \$6,417.00 (testimony relying on tax card admitted as Debtor's Exhibit 2) to \$24,800.00 (Schedule A/B), while his valuation of the Home ranges from \$5,000.00 (Schedule A/B) to \$19,671.29 (valuation per the J.D. Power/NADA Guides admitted as Debtor's Exhibit 1).

Conclusion

After consideration of the evidence, the Court finds that the value of the Property for purposes of chapter 13 plan confirmation is \$45,000.00. The Objection of U.S. Bank to confirmation of the chapter 13 plan is sustained. Mr. Demery will

⁴ Mr. Hensley testified that manufactured homes and property sold for less than \$29,000.00 in Columbus County are usually distressed sales such as REOs, short sales, foreclosure sales, etc. or possibly a single-wide manufactured home which would be considered personal property.

⁵ See *In re Brown*, 289 B.R. 235,238 (Bankr. M.D. Fla. 2003); *In re Graves*, No. 19-01345-NPO, 2019 WL 6170789, *3 (Bankr. S.D. Miss. Nov. 19, 2019).

have a period of thirty (30) days from entry of this order to propose and file a new chapter 13 plan with the Court.

END OF DOCUMENT

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PARTIES TO BE SERVED

Larry Gene Demery
19-80948 C-13

Larry Gene Demery
3 Porter Circle
Durham, NC 27704

John T. Orcutt
6616-203 Six Forks Rd.
Raleigh, NC 27615

Richard M. Hutson, II
3518 Westgate Drive
Suite 400
Durham, NC 27707

Neil Jonas
Brock & Scott
8757 Red Oak Blvd.
Suite 150
Charlotte, NC 28217

William P. Miller
101 South Edgeworth St.
Greensboro, NC 27401